MOD Defence Conditions Guide

Introduction

This is a quick reference guide to the current MOD defence conditions (DEFCON) and their associated defence forms (DEFFORM).

Acquisition teams should familiarise themselves with the text of the appropriate DEFCON and read the relevant topic guidance before using the DEFCONs.

The advice of the acquisition team Senior Commercial Officer (SCO) or Mentor should be sought if there is any doubt as to use or interpretation.

DEFCON Compliance

It is recommended that regular compliance checks are made by Commercial Officers to ensure that both the Contractor and the MOD are meeting their obligations under the DEFCONs specified in a contract. The DEFCON Compliance Matrix captures the contractual compliance requirements that are embedded in DEFCONs and provides an easy to use tool to enable such checking to take place. For ASPECT Contract Management users, the tool will generate a matrix for your contract as part of the contract creation process. For other Commercial Officers, the Compliance Matrix [176KB XLS] is available as a download.

Amendments

Only in exceptional circumstances should the text of DEFCONs be varied to meet the particular needs of a requirement. When this occurs, the text of the replacement condition should be reproduced in full and no reference made to the original DEFCON. Commercial officers should seek advice from the relevant policy sponsor before amending DEFCONs.
Current DEFCONs

DEFCON 5 (Edn 07/99) - MOD Form 640 - Advice And Inspection Note

Application - Include in all contracts for the supply of goods unless they are only to be run on P2P.

Summary - MOD Form 640 is used for deliveries under MOD contracts and this DEFCON provides the applicable contract conditions. Refer to the Delivery and Acceptance topic.

DEFCON 5J (Edn 07/08) - Unique Identifiers

Application - To be included in all enabling contracts, contracts to be run on P2P and CLS contracts utilising Electronic Business Capability (EBC).

Summary - Unique Order Identifiers and/or Unique Receipt Reference Identifiers must be quoted in all correspondence relating to a P2P contract. When used for service contracts, this DEFCON should be caveated so that clause 4 does not apply. Refer to the Enabling Contracts topic. EBC Unique Package Identifiers (EUPI) must be used for packages delivered in response to a demand raised under a CLS contract.

DEFCON 14 (Edn 11/05) - Inventions And Designs Crown Rights And Ownership Of Patents And Registered Designs

Application - Include in contracts likely to generate Intellectual Property.

Summary - Used to secure rights in respect of patented inventions and registered designs made in the course of and resulting from work under the contract. Prior to use the IPR - Conditions topic must be consulted.

DEFCON 14A (Edn 11/05) - Collaboration (Ownership Of Patents And Registered Designs)

Application - Include in aerospace contracts with A|D|S (a merger of the Society of British Aerospace Companies (SBAC), Association of Police and Public Security Suppliers (APPSS) and Defence Manufacturers Association (DMA)) instead of DEFCON 14 (Edn 11/05).

Summary - Used to secure rights in respect of patented inventions and registered designs made in the course of and resulting from work under the contract. Prior to use the IPR - Conditions topic must be consulted.
DEFCON 15 (Edn 02/98) - Design Rights And Rights To Use Design Information

Application - Include in fully funded contracts for the design and development of goods.

Summary - Provides the right to copy and use any information to which the DEFCON applies for the purpose of competitive procurement of delivered goods, as well as other rights including contract monitoring.

To have effect, the DEFCON must be accompanied by DEFFORM 315 - A Statement of the Contract Data Requirement (CDR). Prior to use the IPR - Overview and Policy and IPR - Conditions topics must be consulted.

WARNING: This condition must never be used in a contract or a DEFFORM 177 (Design Rights And Patents (Sub-Contractor's Agreement)) without at least one accompanying completed DEFFORM 315 (Contract Data Requirement) that calls up this DEFCON.

NOTE: It is still appropriate to use DEFCON 15 (Edn 08/74) and 15A (Edn 08/74) in certain circumstances as stated in paragraphs 137 to 153 of the IPR - Conditions topic. You must consult this topic prior to their use.

DEFCON 16 (Edn 10/04) - Repair And Maintenance Information

Application - Include in contracts for the production or supply of operating manuals or repair and maintenance manuals. Also for other standard repair and maintenance documentation for use by or for the MOD in operating, repairing or maintaining equipment, including where appropriate contracts for COTS equipment.

Summary - Provides rights of use to monitor work under the contract and to inspect, test and evaluate the delivered Information and goods. To have effect, the DEFCON must be accompanied by DEFFORM 315 - a statement of the Contract Data Requirement (CDR). Prior to use the IPR - Overview and Policy and IPR - Conditions topics must be consulted.

WARNING: This condition must never be used in a contract or a DEFFORM 177 (design rights and patents (sub-contractor's agreement)) without at least one accompanying, completed DEFFORM 315 (contract data requirement) that calls up this DEFCON.
DEFCON 19 (Edn 01/76) - Free User, Maintenance And Supply Of Drawings

Application - Include in contracts where the Crown has no reproduction rights in the goods to be manufactured but the goods themselves are to be adopted for MOD general use. This DEFCON should not be included in contracts without first consulting the specialists in Intellectual Property as to its applicability.

Summary - Gives the MOD the right to make use of drawings maintained and supplied by a contractor to facilitate future purchase of goods from a different contractor. Prior to use the IPR - Conditions topic must be consulted.

DEFCON 21 (10/04) - Retention Of Records

Application - Include in all contracts subject to DEFCON 15 (Edn 02/98) or DEFCON 16 (Edn 10/04) and apply to all information / data required to be delivered under a Contract Data Requirement (CDR). All other records shall be subject to DEFCON 609 (Edn 10/98) – Contractor’s Records.

Summary - Requires the contractor to maintain a control copy of all deliverable information. This copy is the property of the MOD. Prior to use the IPR - Conditions topic must be consulted.

WARNING: this condition must never be used in a contract or a DEFFORM 177 (Design Rights and Patents (Sub-contractor's Agreement)) without at least one accompanying, completed DEFFORM 315 (Contract Data Requirement) that calls up this DEFCON.

NOTE: DEFCON 21 (Edn 01/58) should only be used in exceptional circumstances. See the IPR - Conditions topic (paragraphs 154 to 157) for guidance on their use.

DEFCON 23 (Edn 08/09) - Special Jigs, Tooling And Test Equipment

Application - Include in contracts that have provision for Government Furnished Assets.

Summary - Sets out terms, conditions, and obligations on the MOD and the contractor, with respect to MOD funded items. Refer to the Government Furnished Assets topic.
DEFCON 35 (Edn 10/04) - Progress Payments

Application - Include in contracts where it is not practicable to measure achievement and pre-determine the value that should be attached to such achievement.

Summary - Sets out the procedure for calculating amounts for monthly progress payments and limitation on amounts payable.

DEFCON 68 (Edn 05/11) - Supply Of Hazard Data for Articles, Materials And Substances

Application - Include in contracts for the supply of goods.

Summary - Requires a contractor to submit data concerning hazardous Articles, materials or substances and other specified information. Otherwise a NIL return is required. The Safety and Environmental Issues and Sustainable Procurement topic should be consulted.

DEFCON 76 (Edn 12/06) - Contractor's Personnel At Government Establishments

Application - Include in all contracts where a contractor is required to carry out work at a Government Establishments or HM Ships.

Summary - Identifies facilities that will be made available to contractors and their liability in respect of damage to Government Property. The obligations of both the MOD and the contractor regarding health and safety control are clearly stated. Prior to use, the Limiting / Excluding Liability For Risks topic must be consulted.

DEFCON 82 (Edn 10/04) - Special Procedures For Initial Spares

Application - Include in contracts when completely new equipment is provided to the Services, or existing equipment is modified.

Summary - Requires the contractor to draw up a list of spare parts that he considers will be sufficient in type and quantity to maintain the operational efficiency of the new or modified equipment during an initial period of use - 2 years unless otherwise specified.
DEFCON 90 (Edn 11/06) - Copyright

Application - Include in contracts that have a need for the delivery and subsequent use of Copyright works generated under the contract or delivered to the MOD.

Summary - Allows the MOD to copy certain Copyright works delivered under a contract. The information can be used within any Government Department and for defence contracting purposes provided that no part of the information has been marked as proprietary and subject to restriction of such use. Prior to use the IPR - Conditions topic must be consulted.

DEFCON 91 (Edn 11/06) - Intellectual Property Rights In Software

Application - Include in contracts that involve the development of bespoke software, including those for ongoing maintenance and support of bespoke software already procured.

Summary - Sets out MOD rights with regard to use of software and software documentation generated and supplied under the contract. It also addresses levy in the event of commercial sales. Prior to use the IPR - Overview and Policy and IPR - Conditions topic must be consulted.

WARNING: This condition must never be used in a contract or a DEFFORM 177 (design rights and patents (sub-contractor's agreement) without a statement of software deliverables provided within the contract's schedule of requirements.

DEFCON 92 – (Edn 08/90) Failure Of Performance

Application - Include in contracts for research, development, design or study.

Summary - Allows for termination of the contract if it is unlikely to be or has not been satisfactorily completed within the specified period, subject to payment of a fair and reasonable price (excluding profit) for authorised work and commitments. Prior to use, the Termination of Contract topic must be consulted - it reflects 'undertakings' agreed with Industry.

DEFCON 113 (Edn 10/04) - Diversion Orders

Application - Include in contracts for the supply of goods.

Summary - Sets out procedures for urgent delivery of specified quantities of goods that are to be supplied under the contract to consignees other than those stated in the contract. Refer to the Delivery and Acceptance topic.
DEFCON 117 (05/06) - Supply Of Documentation For NATO Codification Purposes

Application - Include in all contracts that cover either the full development phase of a project, or for the manufacture of goods not identified with a NATO Stock Number (NSN). May also be included in any contract involving the design or redesign of goods where there is a potential requirement for NATO Codification information, not identified at the outset.

Summary - Requires the contractor to facilitate provision of Item Identification details for codification purposes only. In circumstances where the contractor is the True Manufacturer, he will not be expected to impose any corresponding obligation on his subcontractor as stated, notwithstanding clause 9 of DEFCON 117.

A minimum amount of information provided should be marked as proprietary when contracting for the provision of NATO codification data. Where information is marked proprietary, it should not be entered in a database and should not be released to a third party without permission of the contractor.

DEFCON 126 (Edn 11/06) - International Collaboration

Application - Include in contracts for research, development, studies, Project Definition and Post Design Services.

Summary - Gives the MOD the right to copy and use certain copyright work furnished by the contractor for the purposes of an International Collaboration Agreement, subject to third party rights and fair and reasonable terms for use. Prior to use the IPR - Conditions topic must be consulted.

DEFCON 127 (Edn 10/04) - Price Fixing Condition for Contracts of Lesser Value

Application - Include in unpriced non-competitive risk contracts valued at £250K or less where a price is to be agreed and in all priced contracts where it is intended to agree a price for changes, no greater than a cumulative value of £250K, on the basis of forward estimates of cost.

Summary - Sets out information the contractor is required to provide to ensure a fair and reasonable price can be agreed. It allows for provisional pricing pending agreement of firm prices. The condition facilitates agreement of prices in contracts and amendments of lesser value.
DEFCON 129 (Edn 07/08) - Packaging (For Articles Other Than Ammunition And Explosives)

Application - Include in all contracts that require the packaging of goods. This DEFCON is not applicable to contracts for ammunition and explosives.

Summary - Sets out the contractor responsibilities for packaging, including cleaning, preservation, packing and marking. Also covers Bar Code marking and Spares Price Labelling requirements. In relation to clause 14, consideration should be given as to whether the separate pricing of packaging is practicable and if not then a caveat should be put into the contract to omit this clause.

DEFCON 129J (Edn 07/08) – The Use Of The Electronic Business Delivery Form

Application - To be included in all Contracts to be run on P2P or utilising the Electronic Business Capability for Land CLS Arrangements.

Summary - Details the Use of the Electronic Business Delivery Form (DEFFORM 129J) and calls up the DEFFORM into Contract. DEFFORM 129J is essential for the P2P receipting process, and the tracking and delivery of CLS items to Demanding Units. Refer to the Delivery and Acceptance topic.

DEFCON 176A (Edn 06/08) - MOD Requirements For Competition In Subcontracting (Non-Competitive Main Contract)

Application - Include in non-competitive contracts where the estimated value is more than £1M.

Summary - Requires the contractor to submit proposed purchasing and manufacturing plans to MOD commercial officers. Refer to the Pricing - Subcontracts topic.

DEFCON 501 (Edn 04/04) - Definitions And Interpretations

Application - Include in all contracts.

Summary - Defines terms used regularly in contracts.

Where electronic signatures are employed, under clause 6 a formal means of authentication must be agreed between the parties and defined in the contract.
DEFCON 502 (Edn 06/08) - Specifications

Application - Include in all contracts.

Summary - Covers specifications and their amendments. The MOD has the unilateral right to make alterations to contract specifications, which do not significantly alter the nature of the contract requirements but this should not normally be exercised without prior consultation with the contractor. Any consequent revision in the contract price or delivery requirements or completion date or other provisions of the contract should be the subject of a contract amendment.

This DEFCON is not intended to be used to unilaterally impose changes to the volumes, quantities, performance requirements or delivery requirements of a contract.

DEFCON 503 (Edn 07/05) - Amendments To Contract

Application - Include in all contracts.

Summary - Covers the underlying principles regarding changes to a contract. Subject to the provisions of clause 3 of DEFCON 502 (Edn 06/08), this DEFCON requires all changes to contract requirements, conditions or otherwise, be the subject of a written contract amendment, that can be relied upon for audit purposes.

This DEFCON does not preclude use of electronic data interchange (EDI) as a means of recording agreement to contract amendments.

Refer to the Contract Amendments topic.

DEFCON 507 (Edn 10/98) - Delivery

Application - Include in all contracts for the supply of goods and / or the supply of services in connection with Issued Property, or where the deliverable is in the form of a report or computer software.

Summary - Defines when delivery will occur and allows for the transport or consignment arrangements to be varied subject to contract amendment. Refer to the Delivery and Acceptance topic.
DEFCON 509 (Edn 09/97) - Recovery Of Sums Due

Application - Include in all contracts.

Summary - Gives the MOD the right to recover any sum due under the contract from sums owed to the contractor for any other HMG contract.

Before taking recovery action, the MOD will write to the contractor notifying him of the basis of the claim and the amount due. The MOD will subsequently issue an invoice giving details of how payment should be made. If the contractor fails to provide an adequate response to the notice within a reasonable time the MOD will take recovery action under this condition although the MOD would not act unreasonably in doing so.

DEFCON 513 (Edn 06/10) - Value Added Tax

Application - Include in all contracts.

Summary - Explains the position of the contractor in respect of VAT. It requires the contract price to exclude any UK output VAT and any similar EU or non-EU taxes chargeable on the supply of goods and services by the contractor to the MOD. However, the DEFCON also makes provision for MOD to pay the contractor a sum equal to the chargeable tax where the contractor pays VAT in the UK and in certain other circumstances, where for example the contractor is supplying goods or services to the MOD outside the UK and is required by the laws of the country where the supply takes place to register there for EU or non-EU turnover tax.

The Contractor is responsible for the determination of VAT liability and should consult his local VAT office in cases of doubt. The contractor should notify the Commercial officer of the MOD's VAT liability under the Contract if it is other than the standard rate of VAT.

DEFCON 515 (Edn 10/04) - Bankruptcy And Insolvency

Application - Include in all contracts.

Summary - Gives the MOD the right to determine the contract in cases of suspected Financial Weakness, Insolvency, Bankruptcy, Receivership and Liquidation, without any obligation to compensate for termination of the contract or for loss of future work under it. Refer to the Company Financial Status topic.
DEFCON 516 (Edn 06/04) - Racial Discrimination

Application - Include in all contracts. When race equality is a core requirement of a contract DEFCON 516 should be supplemented by provisions specific to that contract; those provisions may arise in a Statement of Work, Specification or other terms.

Summary - This DEFCON refers to the Race Relations Act 1976. It sets out the MOD's requirement that the contractor will not discriminate unlawfully on racial grounds, and that any related prosecutions or proceedings of which he becomes aware are notified to the MOD. It also sets out the MOD's requirement that, where clause 2 applies, the contractor will comply with the MOD's reasonable directions in order to enable it to fulfil its duty to promote race equality. Prior to use the Special Notes [12KB PDF] appertaining to this DEFCON and its use should be consulted.

DEFCON 518 (Edn 09/97) - Transfer

Application - Include in all contracts.

Summary - Forbids the transfer of a contract from one contractor to another without the prior written consent of the MOD. An obligation is placed on both parties not to dispose of the contract or any part of it without mutual agreement.

The DEFCON does not remove or prevent any rights of subrogation that may result from insurance policies, bonds or other forms of guarantee.

DEFCON 520 (Edn 07/11) - Corrupt Gifts And Payments Of Commission

Application - Include in all contracts.

Summary - Prohibits a contractor from offering or giving to any Crown Servant a gift or consideration as an inducement in connection with the placing of a contract or entering into any MOD contract, in connection with which any undisclosed commission has been paid or will be payable. Breach of this DEFCON entitles the MOD to terminate the contract and recover any loss suffered as a result.

Clause 2 of the DEFCON refers to the Bribery Act 2010 (“the Act”) which contains two general offences covering the offering, promising or giving of a financial or other advantage to another person (active bribery) and the requesting, agreeing to receive or accepting of a financial or other advantage to another person (passive bribery). The Act also sets out two further offences which specifically address commercial bribery:

a. section 6 of the Act creates an offence of bribery of a foreign public official in order to obtain or retain business or a business advantage; and
b. section 7 creates an offence of failing to prevent bribery which can only be committed by a relevant commercial organisation.

Clause 3 of the DEFCON gives the MOD the obligation to act in a reasonable and proportionate manner with regard to the identity of the individuals involved and the gravity of the offence. There must be full consultation with the contractor and every consideration must be given to whether action other than termination is available and appropriate.

Where the MOD considers seeking the termination of a subcontract, account must be taken of the contractor's contractual liabilities to the MOD, in particular where the subcontractor is a single source supplier. Where the MOD seeks the termination of a subcontract there will be an obligation on the MOD to support the contractor by providing evidence to support his case against the subcontractor.

**DEFCON 521 (Edn 10/04) - Subcontracting To Supported Employment Enterprises**

Application - Include in all contracts.

Summary - Invites a contractor to consider placing work on a competitive basis with enterprises registered with the Department for Works and Services, Job Centre Plus, Disability and Rehabilitation Division under the Special Contracts Arrangement Scheme. Refer to the Supplier Selection topic.

**DEFCON 522 (Edn 07/99) - Payment**

Application - Include in all contracts.

Summary - This DEFCON complies with the Late Payment of Commercial Debts (Interest) Act 1998. It establishes a commitment by the MOD to pay correctly approved bills within a 30-day period.

The DEFCON must be accompanied by a completed DEFFORM 522A. Note clause 10 of the DEFCON refers to the Housing Grants Construction and Regeneration Act 1996, which should be read in conjunction with this guideline where applicable. Refer to the Payment and Works topics.

**DEFCON 522J (Edn 05/03) - Payment Under P2P**

Application - Include in all contracts to be run on P2P.

Summary - Places obligations and responsibilities on both the MOD and the contractor to enable payment through P2P. Refer to the Payment topic and P2P website.
DEFCON 522JA (Edn 04/09) - Payment Under P2P - Matching The Invoice And Order (Two-way Match)

Application – To be used only in exceptional circumstances, where the business processes implemented do not require a receipting function to be completed to authorise payment. Payment is automated and generated from the purchase order and invoice (Two-way match).

This does not affect any of the other obligations of the contract. The contractor shall still be required to submit a shipping label in accordance with DEFCON 129J (Edn 07/08).

This clause will only be required in circumstances where the nature of the commodities is high volume and low value. Specific examples include ‘Click’ charges and office stationery where the contracts have been loaded onto Purchase to payment (P2P) as e-catalogues.

DEFCON 523 (Edn 03/99) - Payment Of Bills Using The Bankers Automated Clearing Service (BACS) System

Application - Include in all contracts.

Summary - Requires that the contractor supply banking details for bills to be paid by BACS.

DEFCON 524 (Edn 10/98) - Rejection

Application - Include in all contracts for the supply of goods and services on an item of Issued Property other than contracts specifically for defect investigation.

Summary - Allows the MOD to reject goods that do not conform to the requirements of the contract. The contractor is required to remove, at his own expense, rejected goods. The goods must be replaced at no cost within an agreed timescale. If the contractor objects to the rejection, a dispute within the meaning of DEFCON 530 (Edn 07/04) or 530A (Edn 07/04) will arise. Prior to use the Delivery and Acceptance topic should be consulted.

DEFCON 525 (Edn 10/98) - Acceptance

Application - Include in all contracts for the supply of goods and/or software.

Summary - Defines when acceptance will occur. The DEFCON takes precedence over common law and statutory provisions relating to the acceptance of goods.
The MOD is not prevented from later claiming damages for breach of contract if the goods are found to be defective. Prior to use, the Delivery and Acceptance topic should be consulted.

**DEFCON 526 (Edn 08/02) - Notices**

Application - Include in all contracts.

Summary - Sets out requirements for format and delivery of notices, orders or other forms of communication required to be given in writing under or in connection with the contract.

Electronic Data Interchange (EDI) is excluded as a legitimate means of transmitting a notice as this form of communication is often processed automatically without human intervention. The Law Commission's interpretation of 'writing' requires such a communication to be 'visible' and EDI would not necessarily meet this requirement. The conduct of transactional business by EDI where such messages are pre-defined is acceptable and governed by DEFFORM 30. Refer to the DEFFORM 30 Explanatory Notes.

**DEFCON 527 (Edn 09/97) - Waiver**

Application - Include in all contracts.

Summary - States that as a general principle the rights or remedies of either party may only be waived in writing. No reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy, but as an exception to the general principle, unreasonable delay by either party may constitute a waiver even though it has not been given in writing.

**DEFCON 528 (Edn 10/04) - Overseas Expenditure And Import Licences**

Application - Include in all contracts.

Summary - Requires the contractor to report details of any direct overseas expenditure likely to be incurred in the execution of the contract (including nil return). Data on overseas subcontracts is essential to comply with a number of international agreements and understating the value of overseas work placed may lead to unjustified criticism of the UK. Import licences are the responsibility of the contractor to arrange.

**DEFCON 529 (Edn 09/97) - Law (English)**

Application - Include in all contracts with a UK contractor (unless a contractor registered in Scotland has opted for Scots Law to apply).
Summary - Provides for the contract to be governed by English Law, subject to DEFCON 530 (Edn 07/04). Clause 3 of the DEFCON provides that other jurisdictions may apply solely for the purpose of giving effect to this DEFCON and for the enforcement of any judgement given under English jurisdiction. This provision is necessary to cover the possible need to enforce a judgement made in the UK courts against an overseas contractor through the courts in the contractor's country of origin.

When a contract is being placed with a foreign contractor DEFCON 646 (Edn 10/98) should be called up in the contract instead of DEFCON 529.

**DEFCON 529A (Edn 09/97) - Law (Scots)**

Application - Include in contracts at the request of a contractor registered in Scotland.

Summary - Provides for the contract to be governed by Scots Law, subject to DEFCON 530A (Edn 07/04). Clause 3 of the DEFCON provides that other jurisdictions may apply solely for the purpose of giving effect to this DEFCON and for the enforcement of any judgement given under Scottish jurisdiction. This provision is necessary to cover the possible need to enforce a judgement made in the UK courts against an overseas contractor through the courts in the contractor's country of origin.

When a contract is being placed with a foreign contractor DEFCON 646 (Edn 10/98) should be called up in the contract instead of DEFCON 529A.

**DEFCON 530 (Edn 07/04) - Dispute Resolution (English Law)**

Application - Include in all contracts unless a contractor registered in Scotland has elected to be governed by Scots Law (DEFCON 529A (Edn 09/97)) and then DEFCON 530A (Edn 07/04) shall apply.

Summary - Where a dispute cannot be resolved by negotiation or Alternative Dispute Resolution, this DEFCON requires that the dispute be referred to arbitration except where the dispute is referred to the Review Board for Government Contracts. Prior to use the Dispute Resolution topic should be consulted.

**DEFCON 530A (Edn 07/04) - Dispute Resolution (Scots Law)**

Application - Include in contracts subject to DEFCON 529A (Edn 09/97).

Summary - Where a dispute cannot be resolved by negotiation or Alternative Dispute Resolution, requires that the dispute be referred to arbitration except where the dispute is referred to the Review Board for Government Contracts. Prior to use the Dispute Resolution topic should be consulted.
DEFCON 531 (Edn 05/05) - Disclosure Of Information

Application - Include in all contracts.

Summary - Includes a definition of 'Information'. Subject to exceptions, the DEFCON introduces a mutual obligation on the contractor and the MOD to treat as confidential all information disclosed in connection with or under the contract. Edition 05/05 of DEFCON 531 took many months of careful negotiations in order to strike a balance between the requirement to protect commercially sensitive information and our obligations under the Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIRs). Consequently no additions or amendments to this DEFCON on the FOIA and EIRs are to be offered or accepted. Prior to use the Disclosure of Information and Freedom Of Information topics should be consulted.

DEFCON 532A (Edn 06/10) - Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

Application – Include in all Contracts where it is anticipated that no Personal Data will be processed under the Contract. Where subsequent to Contract signature it is intended to process personal data under the Contract, DEFCON 532B (Edn 06/10) – Protection of Personal Data (Where Personal Data is being Processed on behalf of the Authority) should be inserted in to the Contract by way of Contract Amendment.

Summary - Places obligations on the contractor and the MOD to handle Personal Data in accordance with the Data Protection Act 1998.

DEFCON 532B (Edn 06/10) - Protection of Personal Data (Where Personal Data is being processed on behalf of the Authority)

Application – Include in all Contracts where it is anticipated that Personal Data will be processed under the Contract. Where DEFCON 532B is used, DEFFORM 532 must be completed and form part of the contract.

Summary – Requires the Contractor to process, safeguard and dispose of personal data in accordance with MOD’s instructions under the Contract. MOD remains Data Controller in respect of the personal data under the Data Protection Act 1998. Includes the right to terminate the contract, in full or in part, where a material breach has occurred. Includes requirements on MOD to respond within twenty working days, (or other period as agreed in the Contract), to a request from the Contractor in respect of subcontracting and disposal of personal data. DEFFORM 532 defines the Personal Data concerned, the source of the data and the processes
to be applied to it, the commencement of the processing and the intended disposal of the Personal Data after processing.

**DEFCON 534 (Edn 06/97) - Prompt Payment (Subcontracts)**

Application - Include in all contracts.

Summary - Requires the contractor to make provision in subcontracts for payment within a specified period not exceeding 30 days from receipt of a valid invoice.

**DEFCON 537 (Edn 06/02) - Rights Of Third Parties**

Application - Include in all contracts.

Summary - Avoids misinterpretation of any MOD contracts that may lead to third parties inadvertently being granted any rights under the Third Party Rights Act.

**DEFCON 538 (Edn 06/02) - Severability**

Application - Include in all contracts.

Summary - Ensures that where any term or condition of a contract is held to be invalid, illegal or unenforceable, it can be removed or replaced without invalidating the contract.

**DEFCON 566 (Edn 02/11) - Change of Control of Contractor**

Application - Include in all contracts.

Summary - Provides early warning of change in control of the contractor. Early warning will enable the MOD to make informed decisions on such issues as conduct of extant competitions or negotiations, future contract award and similar issues.

**DEFCON 595 (Edn 10/04) - General Purpose Automatic Test Equipment Data Requirements**

Application - Include in contracts where the contract goods will be supported by General Purpose Automatic Test Equipment (GPATE).

Summary - Requires the contractor to supply, on request and subject to payment of a fair and reasonable price for the work involved, specified test data as may be required for the design and provision of test programmes, jigs and adapters etc. necessary to enable the contract goods to be supported by GPATE.
DEFCON 600 (Edn 09/08) - Guided Weapon Trials and Indemnity

Application - Include in all Research and Development (R&D) contracts that call for trials of a Guided Weapon at Trials Establishments, as defined in DEFCON 600. It may also be appropriate for inclusion in contracts covering the development of guided weapon major components or assemblies that are to be evaluated independently of the weapon. It should not be used except in R&D contracts.

NOTE: The rules, regulations and requirements to be complied with under 5.c)iii are covered under DEFCON 76 (Edn 12/06) – Contractor’s Personnel at Government Establishments – which clarifies each party’s obligations.

Summary - Indemnifies the contractor or any subcontractor for the specific risks detailed in the Condition. Prior to use the Indemnity Against Risks topic must be consulted.

DEFCON 601 (Edn 10/04) - Redundant Materiel

Application - Include in contracts subject to cost incentive pricing arrangements and contracts priced on ascertained costs. Also applies to contracts that include DEFCON 611 (Edn 07/10).

Summary - On completion of the contract, or earlier if appropriate, the contractor must submit to the MOD a list of any redundant materiel. The MOD must issue disposal instructions within three months from the date of receipt.

If a contract amendment leads to arisings of redundant materiel, this DEFCON should be incorporated with the amendment. The DEFCON should be annotated to apply solely to redundant materiel arising as a direct result of the amendment.

When the DEFCON is used solely in relation to DEFCON 611 (Edn 07/10) it should be annotated as such in the contract documents. The condition will apply to the extent that the redundant materiel derives from the property owned by the MOD and issued to the contractor. This includes scrap, redundant materiel arising on repair contracts, and items subject to the provisions of DEFCON 23 (Edn 08/09) - Special Jigs, Tooling and Test Equipment where title in the items has passed to the MOD.
DEFCON 602A (Edn 12/06) - Quality Assurance (With Quality Plan)

Application - Include in contracts where a Quality Plan is required.

Summary - Requires the contractor to ensure that performance of the contract is in accordance with the quality requirements and the Quality Plan specified in the contract.

DEFCON 602B (Edn 12/06) - Quality Assurance (without Quality Plan)

Application - Include in contracts where a Quality Plan is not required.

Summary - Requires the contractor to ensure that performance of the contract is in accordance with the quality requirements specified in the contract.

DEFCON 603 (Edn 10/04) - Aircraft Integration And Clearance Procedure

Application - Include in all contracts that have requirements for the development flight trials of equipment.

Summary - Requires the contractor to provide information and support for aircraft trials undertaken by the MOD under a separate contract with the aircraft design authorities. The contract must specify what support the contractor is required to provide. Depending on the MOD’s procurement strategy, there may be a direct contract with the aircraft designer for integration and clearance activity, or the equipment contractor may be required to place a subcontract with the aircraft designer for this service.

DEFCON 604 (Edn 11/04) - Progress Reports

Application - Include in contracts where a Progress Report is required.

Summary - Requires the contractor to provide Progress Reports in the form and frequency specified in the contract.

The DEFCON would not normally be included in contracts for standard off the shelf items or in short term fixed delivery contracts.
DEFCON 605 (Edn 06/97) - Financial Reports

Application - Include in cost incentive contracts and those priced on ascertained costs where Financial Reports are required.

Summary - Requires the contractor to submit Financial Reports on DEFFORM 136 or as specified in the contract.

DEFCON 606 (Edn 10/97) - Change And Configuration Control Procedure

Application - Include in contracts where changes to specifications or build standards of goods may occur and where a Change and Configuration Control Procedure is required.

Summary - Procedures for changes to contract requirements and configuration control, where required, must be specified in the contract. The detailed procedures will depend on the nature of the project. All approved changes to the contract requirements should be the subject of a formal contract amendment.

DEFCON 607 (Edn 05/08) - Radio Transmissions

Application - Include in contracts where it is necessary for radio transmissions to be made by the contractor for development or testing of electronic or other types of transmitting/receiving equipment.

Summary - Requires the contractor to obtain a licence before making transmissions. The contractor must obtain approval from the acquisition team for the frequencies to be used. The Authority's Project Manager or Equipment Support Manager must ensure that where Radio Transmissions are required to fulfill the Contract that they inform the Defence Spectrum Organisation (DSO) (part of Systems Engineering and Integration Group - SEIG).

DEFCON 608 (Edn 10/98) - Access And Facilities To Be Provided By The Contractor

Application - Include in contracts where the MOD requires access to the contractor or subcontractor's premises and/or provision of facilities by the contractor or subcontractor.

Summary - Allows the MOD to monitor progress and quality standards applied by the contractor in performance of the contract. The contractor must provide reasonable access to, and facilities at, his premises for this purpose at no additional cost. The DEFCON should be flowed down to subcontractors as far as is reasonably practical, with access to such premises arranged through the contractor.
DEFCON 609 (Edn 10/98) - Contractor's Records

Application - Include in all contracts and apply to records required under the contract that are not subject to DEFCON 21 (Edn 10/04) i.e. DEFCON 609 should not be applied to information delivered under a Contract Data Requirement (CDR).

Summary - Requires the contractor to maintain and make available to the MOD records specified in the contract. The MOD has the right, subject to DEFCON 531 (Edn 05/05), to copy or have copied the records. Unless specified otherwise in the contract, the records must be held for at least 4 years from the end of the contract.

DEFCON 610A (Edn 12/02) - Enabling Contracts Duration Period (Tasking Contracts)

Application - Include in Enabling Contracts that provide for tasks to be performed by the contractor as authorised by the MOD (e.g. PDS, fault investigations and other tasking contracts).

Summary - Records that the duration specified in the Enabling Contract is the period during which work under the contract may be authorised by the MOD. This DEFCON is not appropriate for use in Enabling Contracts that cover the ordering of spare parts or the performance of work on goods (e.g. repairs). Prior to use the Enabling Contracts topic should be consulted.

DEFCON 610B (Edn 12/02) - Enabling Contracts - Duration Period (Spares / Repair Contracts)

Application - Include in Enabling Contracts that cover the procurement of spare parts and/or work to be carried out on issued property.

Summary - Records the Enabling Contract duration period and the relevant ordering procedures. The duration is the period in which the MOD may place orders for spare parts or for the procurement of work on goods (e.g. repairs). Prior to use the Enabling Contracts topic should be consulted.

DEFCON 611 (Edn 07/10) - Issued Property

Application - Include in all contracts where Issued Property is required.

Summary - Addresses the rights and obligations of the contractor and the MOD in respect of ownership, receipt, inspection and use of MOD owned property loaned to the contractor. Where DEFCON 23 (Edn 08/09) is included, DEFCON 611 may also include special jigs, tools and test equipment in particular circumstances. Prior to use the Limiting / Excluding Liability For Risks and Government Furnished Assets topics should be consulted.
DEFCON 612 (Edn 10/98) - Loss Of Or Damage To The Articles

Application - Include in all contracts for the supply of goods.

Summary - Defines the point at which risk is transferred from the contractor to the MOD. It remains with the contractor until the goods are delivered to the MOD. Risk does not return to the contractor unless the goods are rejected. Prior to use the Limiting / Excluding Liability For Risks topic should be consulted.

DEFCON 613 (Edn 06/97) - Authorisation Of Work (PDS Contracts)

Application - Include in Post Design Service (PDS) contracts requiring defect investigations, studies and other tasks that cannot be defined with precision at the outset.

Summary - Provides for tasks to be authorised on a Task Approval Form. Unless specified otherwise in the contract, the contractor should not commence work on the task before there is agreement on the price of performing it and written approval is given by the MOD approving authority stated in the contract.

DEFCON 614 (Edn 09/03) - Default

Application - Include in all contracts except those for research and other similar study-type contracts where DEFCON 92 (Edn 08/90) is more appropriate.

Summary - Provides a remedy for the failure of the contractor to deliver or perform on time. Prior to use the Termination Of Contract topic should be consulted.

DEFCON 615A (Edn 03/04) - Orders For Articles / Services Under Enabling Contracts

Application - Include in all enabling contracts containing DEFCON 618 (Edn 12/02).

Summary - Records the means by which orders for the supply of goods and services may be placed on contractors pursuant to enabling contracts that contain all the underlying terms and conditions applicable to their supply. Prior to use the Enabling Contracts topic should be consulted.
DEFCON 615B (Edn 03/04) - Orders For Articles / Services Under Enabling Contracts Following Contractor's Quotations

Application - Include in all Enabling Contracts covering the supply of goods and services that are neither 'standing offer' contracts as described in DEFCON 618 (Edn 12/02) or 'tasking' contracts as described in DEFCON 610A (Edn 12/02).

Summary - Records the means by which an order may be placed and contracts created for the supply of goods and services pursuant to an Enabling Contract that does not contain all the underlying terms and conditions (including price) applicable to their supply and which, in consequence, provides for the issue of quotations by the contractor. Prior to use the Enabling Contracts topic should be consulted.

DEFCON 616 (Edn 10/98) – Competition / Alternative Sourcing

Application - Include in all Enabling Contracts.

Summary – The MOD reserves the right to invite competitive quotations from the contractor and others, and to place orders elsewhere during the period of the contractor's standing offer. Refer to the Enabling Contracts topic.

DEFCON 617 (Edn 12/02) - Enabling Contracts - Estimated Quantities

Application - Include in all Enabling Contracts for the supply of goods and services containing DEFCON 615A (Edn 03/04) or 615B (Edn 03/04).

Summary - Records that estimates contained in the Enabling Contract should not be construed as orders. They do not constitute any commitment on the part of the MOD to place any orders or any particular volume of orders. Refer to the Enabling Contracts topic.

DEFCON 618 (Edn 12/02) - Enabling Contracts - Standing Offer

Application - Include in all Enabling Contracts for the supply of goods and services containing standing offer arrangements.

Summary - Provides consideration for the contractor's standing offers set out in the Enabling Contract. Refer to the Enabling Contracts topic.
DEFCON 619A (Edn 09/97) - Customs Duty Drawback

Application - Include in contracts subject to payment of Import Duty.

Summary - Provides for the contract price to be inclusive of any UK Customs and Excise or other duty payable. The contractor cannot claim drawback of UK import duty on goods supplied that may be for shipment overseas.

DEFCON 621A (Edn 06/97) - Transport (If The Authority Is Responsible For Transport)

Application - Include in all contracts where the MOD is responsible for transport of goods associated with delivery.

Summary - Requires the contractor to apply for transport instructions if appropriate. For overseas consignments, requires goods to be accompanied by the Transit Documentation specified by the Transport Officer, who will arrange Customs clearance.

DEFCON 621B (Edn 10/04) - Transport (If Contractor Is Responsible For Transport)

Application - Include in all contracts where the contractor is responsible for transport of goods associated with delivery.

Summary - The contractor is responsible for transport, loading, unloading and the provision of special handling equipment where necessary for the goods supplied under the contract.

DEFCON 622 (Edn 12/02) - Enabling Contracts - Repair Turn Around Times

Application - Include in all Enabling Contracts covering the repair and / or overhaul of issued property.

Summary - Stipulates the time within which, contractually, work on the issued property should be undertaken and the goods returned to the MOD.
DEFCON 624 (Edn 04/10) - Use Of Asbestos In Arms, Munitions Or War Materials

Application - Include in contracts for the design, development, production or supply of goods.

Summary - Mandates that asbestos of any type must not be incorporated into goods except in exceptional circumstances where prior consent has been given in writing. Refer to the Safety and Environmental Issues topic.

DEFCON 625 (Edn 10/98) - Co-Operation On Expiry Of Contract

Application - Include in Private Finance Initiative (PFI), Public / Private Partnership (PPP) and other facility management contracts when required by the acquisition team.

Summary - Requires the contractor to assist with the transition of management when management is transferred to the MOD or a different person.

This DEFCON should be used in circumstances that may require the continuation of a Shared Data Environment (SDE) after the contract ends.

DEFCON 627 (Edn 12/10) - Requirement for a Certificate of Conformity

Application - Include in all contracts where a certificate of conformity and traceability of product are required. The DEFCON may be included in contracts that do not include the requirements of AQAPs 2110, 2120, 2130 or 2131. The DEFCON must be used in all contracts for aircraft or aircraft parts including contracts for supply, repair and overhaul. This DEFCON must be accompanied by DEFCON 609.

Summary – AQAPs 2110, 2120, 2130 and 2131 call for a certificate of conformity, but do not define what information should be provided. The DEFCON, where called up in a contract, defines the minimum information the MOD requires. The MOD will accept a supplier’s standard form of certificate (where they exist) providing it contains the defined information. The Quality Assurance Focal Point within the Acquisition Team will identify which items in an order require a certificate of conformity and those additional items that require traceability through the supply chain. The contract therefore must clearly identify which items require Certificates of Conformity and Traceability. Prior to use the Quality Assurance in Contracts guidance should be consulted.
DEFCON 631 (Edn 12/08) - Interim Certified Cost Statement

Application - Include in cost incentive contracts and those priced on the basis of ascertained costs with a value in excess of £250K or two years duration.

Summary - Requires the contractor to submit an Interim Certified Cost Statement at the end of each of financial year, covering work done during the year.

DEFCON 632 (Edn 02/07) - Third Party Intellectual Property - Rights and Restrictions

Application - Include in all contracts.

Summary - The condition provides a comprehensive framework for all intellectual property liabilities reflecting current legislation. Requires the contractor to promptly notify the MOD of third party patents and registered designs relevant to performance of the contract. Also requires the contractor to notify the MOD of any relevant restriction on use of information. Once appropriately notified, the MOD can authorise use by the contractor of such third party IPR. Prior to use the IPR - Overview and Policy and IPR - Conditions topics should be consulted.

DEFCON 637 (Edn 08/99) - Defect Investigation And Liability

Application - Include in PDS, repair and modification contracts and those contracts under which goods are to be supplied where no subsequent PDS, repair or modification contract is envisaged.

Summary - Requires the contractor to submit to the MOD a list of goods that have been investigated / rectified under the contract.

DEFCON 638 (Edn 12/08) - Flights Liability And Indemnity

Application - Include in contracts involving aircraft that are, or will become, the property of MOD under the contract. The aircraft will require, or may involve, performance of authorised flight trials including production, development, repair and overhaul contracts or PDS contracts.

Summary - Indemnifies contractors for properly authorised activities whilst operating MOD owned aircraft and secures a counter indemnity for the MOD in respect of specified risks and in particular, unauthorised activities. Prior to use the Indemnity Against Risks topic must be consulted.
DEFCON 642 (Edn 06/97) - Progress Meetings

Application - Include in all contracts where progress meetings are required.

Summary - Sets out the requirements for attending and producing minutes of progress meetings.

DEFCON 643 (Edn 07/04) - Price Fixing

Application - Include in unpriced non-competitive risk contracts valued in excess of £250K where a price is to be agreed and in all priced contracts where it is intended to agree a price for changes greater than a cumulative value of £250K on the basis of forward estimates of cost.

Summary - Facilitates agreement of non-competitive prices in contracts and amendments. The condition entitles MOD to equality of information with the contractor. Refer to the Pricing - Price Fixing DEFCON 643 topic.

DEFCON 644 (Edn 10/98) - Marking of Articles

Application - Include in all contracts for the supply of goods.

Summary - Sets out the procedures for marking goods where these are not stated elsewhere in the contract.

DEFCON 645 (Edn 07/99) - Export Potential

Application - Include in contracts for pre-main gate studies and other equipment related studies; and for the development of equipment including major modification programmes but excluding PDS.

Summary - Allows the contractor to make proposals that would enhance the export potential of the article to be supplied, its sub-systems or major components. The MOD is not bound to accept a proposal.

DEFCON 646 (Edn 10/98) - Law And Jurisdiction (Foreign Suppliers)

Application - Include in contracts with a foreign contractor, in place of DEFCON 529 (Edn 09/97) or DEFCON 529a (Edn 09/97), when some or all of the contract will be performed outside the UK.

Summary - Provides for the contract to be governed and interpreted in accordance with English Law. Addresses dispute procedures, violation or conflict, termination and appointment of solicitors in relation to legal issues.
DEFCON 648 (Edn 10/02) - Availability Of Information

Application - Include in all non-competitive risk contracts valued at greater than £250K, where the price, or any amendment to the contract, is to be established by use of the risk rate of profit in accordance with the Government Profit Formula. The DEFCON may also be included in competitively won contracts but only for the purposes of amendments thereto.

Summary - Requires the contractor to maintain certain records for a minimum period after completion of the contract and, when requested, to afford reasonable facilities for the MOD to examine the records to use the information to price amendments and follow-on contracts (i.e. contracts for other goods or services of a similar or substantially similar kind to be supplied or performed under any other contract (whether made or under negotiation) between the contractor and the MOD) or and to check the accuracy of its estimating procedures.

Additionally either party may, subject to DEFCONs 650 (Edn 10/02) and 651 (Edn 08/09), use the information so that reference may be made to the Review Board. Prior to use the Pricing - Post Costing and Pricing - Government Profit Formula topics should be consulted.

DEFCON 648A (Edn 07/04) - Availability Of Information

Application - Include together with DEFCON 650A (Edn 07/04) and 651A (Edn 07/04) as follows:

- In all non-competitive risk contracts (including those arising from NAPNOC agreements and those priced using DEFCON 643 (Edn 07/04)) whose estimated cost is greater than £5M, where the price (or any amendment to the contract) is to be established by use of the risk rate of profit in accordance with the Government Profit Formula.

- In competitively won contracts but only for the purposes of amendments to the original contract the estimated cost of which is greater than £5M.

Summary - Requires the contractor to maintain certain records and financial data for a minimum period after completion of the contract and, when requested, to afford reasonable facilities for the MOD to examine the records to use the information to price amendments and follow-on contracts (i.e. contracts for other goods or services of a similar or substantially similar kind to be supplied or performed under any other contract (whether made or under negotiation) between the contractor and the MOD) and to check the accuracy of its estimating procedures. The extent and the level of cost recording and reporting for amendments and follow-on contracts to competitive contracts shall be agreed as part of the contract negotiations on a case by case basis.
Additionally either party may, subject to DEFCONs 650A (Edn 07/04) and 651A (Edn 07/04), use the information to establish whether the contract price should be adjusted for any unconscionable profit or loss in excess of specified thresholds. Prior to use the Pricing - Post Costing and Pricing - Government Profit Formula topics should be consulted.

**DEFCON 649 (Edn 07/99) - Vesting**

Application - Include in contracts that provide for advances against the contract price, except contracts for services that do not require the supply of materiel.

Summary - Safeguards taxpayer interests in relation to MOD contracts on the basis of advances against the contract. Ownership of goods is transferred to the MOD as soon as construction begins or materiel is acquired specifically for its allocation or incorporation in any of the goods being supplied under the contract. If the MOD terminates the contract (other than under DEFCON 656 (Edn 03/06)) ownership is transferred back to the contractor, except for items accepted in accordance with DEFCON 625 (Edn 10/98).

**DEFCON 650 (Edn 10/02) - References To The Review Board Of Questions Arising Under The Contract**

Application - Include in all contracts that contain DEFCON 652 (Edn 07/04), and those where DEFCON 648 (Edn 10/02) or DEFCON 653 (Edn 10/04) (if elements of the pricing formula are fixed on the basis of forward estimates e.g. Target Cost arrangements) are included.

Summary - Enables either party to refer the main contract to the Review Board. Prior to use the Pricing - Government Profit Formula topic must be consulted.

**DEFCON 650A (Edn 07/04) - References To The Review Board Of Questions Arising Under The Contract**

Application - Include in all contracts that contain DEFCON 652 (Edn 07/04) and those where DEFCON 648A (Edn 07/04) is included.

Summary - Enables either party to refer the main contract to the Review Board. Prior to use the Pricing - Government Profit Formula topic must be consulted.
DEFCON 651 (Edn 08/09) - Reference To The Review Board Of Questions Arising In Relation To Relevant Subcontracts Including Those With A Subsidiary Company Or Firm

Application - Include in all contracts that contain DEFCON 652 (Edn 07/04) and where DEFCON 648 (Edn 10/02) or DEFCON 653 (Edn 10/04) (if elements of the pricing formula are fixed on the basis of forward estimates e.g. Target Cost arrangements) are included.

Summary - Enables the MOD or a subcontractor to refer any subcontracts exceeding £250K, including those placed on a subsidiary company, (or such other amount as may be specified in the contract) to the Review Board. Prior to use the Pricing - Government Profit Formula topic must be consulted.

DEFCON 651A (Edn 07/04) - Reference To The Review Board Of Questions Arising In Relation To Relevant Subcontracts Including Those With A Subsidiary Company Or Firm

Application - Include in all contracts that contain DEFCON 652 (Edn 07/04) and where DEFCON 648A (Edn 07/04).

Summary - Enables the MOD or a subcontractor to refer any subcontracts exceeding £250K, including those placed on a subsidiary company, (or such other amount as may be specified in the contract) to the Review Board. Prior to use the Pricing - Government Profit Formula topic must be consulted.

DEFCON 652 (Edn 07/04) - Remedy Limitation

Application - Include in all non-competitive risk contracts where an Equality of Information Pricing Statement is signed by the parties.

Summary - Provides either party with the right to refer a contract to the Review Board for Government Contracts where it has been proved that the information referred to in the Equality of Information Statement was, for example, materially inaccurate and where the parties cannot reach agreement by negotiation on any adjustment (if any) made to the contract price.

DEFCON 653 (Edn 10/04) - Pricing On Ascertained Costs

Application - Include in non-competitive, non-risk contracts where it has not been possible to agree a firm or fixed price at the outset. It should also be included in Target Cost Incentive type contracts.
Summary - Facilitates pricing of non-competitive contracts where it is not possible to agree a firm or fixed price either at the outset or during the currency of the contract. It provides the MOD with details of costs properly incurred.

This DEFCON states that properly incurred costs, direct and indirect, will be paid together with a sum for profit in accordance with the Government Profit Formula. Refer to the Pricing - Ascertained Costs DEFCON 653 topic.

**DEFCON 653A (Edn 12/08) - Costed Contracts – Contractor's Certified Cost Statements**

Application – Include in all contracts subject to DEFCON 653 (Edn 10/04) and other contracts where ascertained costs are to be used as the basis of pricing and the estimated value of the contract is in excess of £1,000,000. The Condition does not apply to contracts where the price may be re-determined on the basis of outturn costs.

Summary – Requires the contractor to submit a Certified Cost Statement with the request for final settlement.

**DEFCON 654 (Edn 10/98) - Government Reciprocal Audit Arrangements**

Application - Include in contracts together with DEFCON 643 (Edn 07/04) and / or DEFCON 653 (Edn 10/04) for overseas contractors in countries with which the MOD has reciprocal pricing arrangements. Refer to the Overseas Procurement Topic for the listed countries.

Summary - Provides for officials of the relevant country to be authorised representatives of the MOD for the purposes of the pricing conditions included in the contract.

**DEFCON 656 (Edn 03/06) - Break**

Application - Include in all contracts valued in excess of £250K and which are expected to last for nine months or more from the date of contract award or in any contract below that threshold where there is a risk that the customer may withdraw the requirement.

Summary - Allows the MOD unilaterally to break the contract.

DEFCON 656 is not usually included in Enabling Contracts, trial orders, or in research and study contracts of low value and short duration where there is no intention to extend such contracts. The contractor is required to ensure a period of notice that accords with the provisions of this DEFCON is flowed down to the subcontractors / suppliers. In respect of contracts below the threshold of £250K,
DEFCON 656 is to be exercised only when the customer has withdrawn the requirement.

Prior to use the Termination Of Contract topic must be consulted.

**DEFCON 659 (Edn 06/09) - Security Measures**

Application - Include in all contracts where any matter connected with the contract is to bear the protective marking CONFIDENTIAL or above.

Summary - Specifies measures to be taken by the contractor to protect information, and requires certain information be made available to the MOD. Requires the contractor to seek authority from the MOD before placing any subcontract, and specifies provisions to be included in any subcontract to cover security measures. Permits the MOD to terminate the contract in certain circumstances.

Prior to use the Disclosure of Information topic and the DIN 2010DIN05-038 - Handling and Use of Commercially Sensitive Information should be consulted.

**DEFCON 661 (Edn 10/06) - War Risk Indemnity**

Application - Use in contracts that may require attendance of the contractor's personnel outwith the Territories listed in Schedule 1. Proposals for use should be referred for consideration at Band B2 level or above.

Summary - Indemnifies the contractor for the specific risks detailed in the condition for which no insurance cover is available, available only at a price that does not represent value for money or the contractor's insurance cover is withdrawn or subject to exclusion. DEFCON 661 is supplementary to the contractor's existing cover, NOT an alternative to the contractor's own insurance cover. Prior to use the Indemnity Against Risks topic must be consulted.

**DEFCON 661A (Edn 05/02) - War Risk Indemnity - Alternative Version**

Application - Not for general use, special conditions apply. It is recommended that such decisions are referred to the appropriate Director Commercial for advice. Proposals for use should be referred for consideration at Band B2 level or above.

Summary - As DEFCON 661 (Edn 10/06), it indemnifies the contractor for the specific risks detailed in the condition for which no insurance cover is available, available only at a price that does not represent value for money or the contractor's insurance cover is withdrawn or subject to exclusion. The condition is supplementary to the contractor's existing cover, not an alternative to the
contractor's own insurance cover. Prior to use the [Indemnity Against Risks topic](#) must be consulted.

**DEFCON 681 (Edn 06/02) - Decoupling Clause - Subcontracting With The Crown**

Application - Include in all contracts where it is known at the outset, or there is a possibility, that a prime contractor may subcontract any element of the work back to the Crown (e.g. a MOD Agency or Establishment with particular expertise).

The condition shall not be included in contracts in circumstances where the contractor has been directed by the Authority to subcontract all or part of the contract to the Crown.

Summary - Reinforces the principle that the contractor is responsible for all aspects of performance of the contract, notwithstanding that elements of the contract may be performed by the Crown under subcontract arrangements.

The intention is to 'decouple' as far as possible the MOD's actions as a subcontractor from any effect this may have on the contractor's ability to perform the prime contract and to make clear to the prime contractor that he cannot escape from his contractual obligations because of the failure of any subcontractors to perform, including MOD subcontractors. Refer to the [Prime Contracting topic](#).

**DEFCON 684 (Edn 01/04) - Limitation Upon Claims In Respect Of Aviation Products**

Application - Include in all contracts for the supply of Aviation Products. This includes contracts for the supply of goods, repair and overhaul contracts, contracts for the supply of technical publications and other contracts in support of aircraft, space vehicles and satellites.

Summary - Defines the limitations on claims against the contractor and his subcontractors. The DEFCON relates solely to the extent of claims the MOD may make in relation to the supply of Aviation Products, it does not preclude further conditions relating to pre or post delivery liabilities. Refer to the [Indemnity Against Risks topic](#).
DEFCON 687A (Edn 06/01) - Provision Of A Shared Data Environment Service

Application - Include in contracts for which there is a requirement for a Shared Data Environment (SDE) Service.

Summary - Sets out what service the contractor managing an SDE for a Project is to provide including security and confidentiality, information management, intellectual property, storage and archiving, disaster recovery, availability of the service, changes, audit and transfer. DEFFORM 687C The Electronic Information Sharing Agreement must be completed and issued with the contract. Refer to the Guidelines for Industry No 15 (Issue 2).

DEFCON 687B (Edn 06/01) - Shared Data Environment System Transfer Arrangements

Application - Include in contracts that includes DEFCON 687A (Edn 06/01) where the project manager or equipment support manager determines that contractor-generated IPR is necessary to continue to operate the SDE system upon transfer.

Summary - Gives the MOD the right to use information in the SDE for Project Implementation and requires the contractor to grant licences free of charge under his IPR in the event the MOD wishes to appoint another contractor to provide a SDE Service for the Project, on completion or termination of the contract. Refer to the Guidelines for Industry No 15 (Issue 2).

Interim DEFCON 691 (Edn 08/02) - Timber And Wood-Containing Products Supplied Under The Contract

Application - To be used in all contracts where timber or wood containing products are to be supplied.

Summary - Ensures MOD contractors are aware of the MOD policy on sustainable procurement of timber. Requires the contractor to obtain and retain evidence of sustainability for timber and wood-containing products delivered to the MOD and consumed during performance of contracts.

Requires contractor to submit data on timber procurements to the MOD using DEFFORM 691A - Timber and Wood-Containing Products Supplied under the Contract - Data Requirements. Refer to the Safety and Environmental Issues topic.
DEFCON 693 (Edn 04/06) - Government Procurement Card

Purpose of DEFCON 693

Application – Include in Enabling Contracts subject to DEFCON 615A (Edn 03/04) if the Government Procurement Card (GPC) is to be one of the payment mechanisms.

Special Notes

1. Where it has been agreed that GPC is to be the only payment mechanism in an Enabling Contract this DEFCON should be used instead of DEFCON 522 (Edn 07/99) and DEFFORM 522A and DEFCON 5 (Edn 07/99). Where GPC is used alongside another payment mechanism (e.g. that defined in DEFCON 522 and DEFFORM 522A, and MOD Form 640) then it is essential that the Contract identifies how the different payment mechanisms will apply e.g. by Line Item or by Order. It is highly recommended that there should only be one payment mechanism to avoid the risk of duplicate payments; in particular, DEFCON 5 and MOD Form 640 should not be used with the GPC payment mechanism.

2. Where DEFCON 693 is called up in the ITT, the following statement should be included in the Special Notes and Instructions to Tenderers:

"It is the Authority’s intention to make payment under the proposed contract either in whole or in part by the Government Procurement Card (GPC), a VISA badged purchasing card, provided to the Authority by Barclaycard Business. Accordingly the successful Tenderer must be capable of Processing VISA transactions. In these circumstances, payment to the successful Tenderer would be made where applicable by his nominated VISA Merchant Acquiring Bank (VMAB) within the timescales agreed between the Tenderer and his VMAB, normally no longer than 4 days. The Authority will require the successful Tenderer to process the transaction on Electronic Point of Sale (EPOS) equipment which shall provide either VISA Global Invoice Specification (VGIS) capability, or, as a minimum requirement, VISA Level 3 Line Item Detail (LID) capability Level 3 Line Item Detail Capability for all transactions. The Authority anticipates that even with the merchant service levy applied by the VMAB, the use of the GPC will greatly simplify trading, reduce administrative costs and shorten the time from dispatch to payment. Accordingly the Authority expects the Tenderer to reflect any reduced administrative costs and earlier payment in his pricing response."
DEFCON 694 (Edn 06/06) - Accounting For Property Of The Authority

Application - Include in all contracts involving issue of MOD property to the contractor, this includes those subject to DEFCON 23 (Edn 08/09) and / or 611 (Edn 07/10).

Summary - Requires contractors to maintain proper records of possession, use and consumption of MOD property. Refer to the Government Furnished Assets topic.

DEFCON 695 (Edn 07/04) - Interim Summary Cost certificate - Post Costing

Application - Include where post costing may be required in non-competitive fixed or firm price risk contracts whose estimated costs exceed £5M that have been priced in accordance with the Government Profit Formula and include DEFCONs 648A (Edn 07/04), 650A (Edn 07/04) and 696 (Edn 07/04) and have a duration of, say, 5 years or more.

Summary - Requires that the contract and relevant subcontracts should indicate the intervals for preparation of interim Summary Cost Statements. Prior to use the Pricing - Post Costing topic must be consulted.

DEFCON 696 (Edn 07/04) - Provisions In Relation To A Final Cost Summary Statement - Post Costing

Application - Include where post costing may be required in non-competitive, fixed or firm price risk contracts over £5M that have been priced in accordance with the Government Profit Formula and include DEFCON 648A (Edn 07/04) and 650A (Edn 07/04).

Summary - Establishes in contracts and relevant subcontracts a due date for the submission of final Cost Certificates and Summary Cost Statements, when these have been requested under clause 2 of DEFCON 648A. Also provides for a retention of 2% of the contract price in contracts having an estimated cost over £10M and in contracts under £10M where MOD notifies the contractor within 6 months of the period stated in clause 1 of DEFCON 648A. Contracts having estimated contract costs over £50M the amount of the retention will be reduced from 2% to 1% of contract price provided that interim Cost Certificates and Summary Cost Statements have been supplied in accordance with DEFCON 695 (Edn 07/04). Prior to use the Pricing - Post Costing topic must be consulted.
DEFCON 697 (Edn 12/10) - Contractors On Deployed Operations - CONDO

Application – Include in all contracts that have an actual or potential requirement for the presence of Contractors, subcontractors and their employees working in a Operations Area (OA) designated for CONDO purposes by the Permanent Joint Headquarters (PJHQ) or Front Line Commands (FLCs).

Summary – Provides a framework to facilitate the organised deployment of Contractors, subcontractors and their respective employees (including the management of Locally Recruited Workers). The Condition details the obligations of both the Contractor and the Authority in such circumstances.

Clause 12 places an obligation on the Contractor to provide an approval or the reasons for declining to provide such approval within 72 hours of the Authority’s request to move a Contractor’s Employees or Sub-Contractors employees to a non-expected work location. Where it is agreed that it is impractical or not possible to provide such approvals within 72 hours the negotiated notice period should be included in the Contract instead.

This DEFCON must be used in conjunction with DEFCONs 76 (Edn 12/06), 611 (Edn 07/10), 694 (Edn 06/06) and DEFSTAN 05-129 and, if applicable DEFCON 661 (Edn 10/06) or 661A (Edn 05/02) as appropriate. Refer to the CONDO topic guidance.

DEFCON 703 (Edn 11/02) - Intellectual Property Rights - Vesting In The Authority

Application - Use when it is necessary to secure MOD ownership of the results of fully funded work. It is not normally used in the same contract as another Intellectual Property condition.

Summary - This condition is contrary to the MOD’s usual contracting policy and is used only in exceptional circumstances in fully funded contracts. It provides that all the results of the work undertaken under the contract (foreground information) will belong to the MOD. Prior to use the IPR - Conditions topic must be consulted.
DEFCON 705 (Edn 11/02) - Intellectual Property Rights - Research And Technology

Application - Include only in fully funded research and technology contracts (i.e. all contracts appertaining to the Research Programme funded by the MOD). This use extends to work up to the MOD 'Initial Gate' project approval stage but not beyond, except for work on any specific research task that does not directly lead to the design of equipment for subsequent production.

Summary - This is a comprehensive condition covering technical information, patents and designs. Prior to use the IPR - Conditions topic must be consulted.